

## **REMARKS**

### **I. Status of the Claims**

Claims 26-40, 54-61, and 95-115 were previously allowed. Claims 26-34, 36-40, 54, 55, 57-61, 95, and 97-123 are currently pending. Claims 116-131 are added herein. Claims 1-26, 35, 41-53, 56, 62-94, and 96 are cancelled, with claims 35, 56, and 96 being cancelled herein.

Claim 26 has been amended to recite that the absolute value of the difference in the  $\Delta V$  between the center and the surface of the polyester particles fed to the extrusion zone is less than 0.25 dL/g. Support for that amendment can be found, for example, at page 8, lines 15-21 of the specification. Claim 26 has also been amended to recite that the polyester particles have an acetaldehyde level of 10 ppm or less before introducing said particles into the extrusion zone. Support for that amendment can be found, for example at page 10, lines 28-30 of the specification.

Claim 28 has been amended to correct an obvious typographical error.

Claim 33 has been amended to change the dependency from claim 27 to independent claim 26. Support for that amendment can be found, for example, at page 21, lines 9-10 of the specification.

Claims 38 and 39 have been amended to change the dependency from claim 36 to independent claim 26. Support for those amendments can be found, for example, at page 19, lines 18-20 of the specification.

Claim 54 has been amended to refer to the molded part referenced in independent claim 26, from which claim 54 indirectly depends. Support for that amendment can be found, for example, at page 10, lines 17-18 of the specification.

Claim 57 has been amended to depend from independent claim 26 and to refer to the absolute difference in  $\text{It.V.}$  values. Support for that amendment can be found, for example, at page 8, lines 15-21 of the specification.

Support for new claims 116 and 117 can be found, for example, at page 10, lines 28-30 of the specification. Support for new claims 118 and 119 can be found, for example, at page 19, lines 18-20 of the specification. Support for new claims 120 and 121 can be found, for example, at page 8, lines 15-21 of the specification. Support for new independent claim 122 and all claims dependent thereon can be found, in addition to the aforementioned lines of the specification, at page 7, lines 14-15 and page 7, lines 25-28.

Accordingly, no new matter has been added by this Amendment.

## **II. The '659 Fujimori Patent**

During prosecution, Applicants asserted that U.S. 6,200,659 ("the '659 Fujimori patent") taught subjecting polymer particles to solid state polymerization than thus did not teach or suggest the claimed invention. See, e.g., Response Under 37 C.F.R. § 1.111 dated March 15, 2006 (stamped as received by the PTO on March 20, 2006), for example, at pages 7-8. However, it has recently come to Applicants' attention that the '659 Fujimori patent in fact does contain Comparative Example 4, wherein the chips were not subjected to solid phase polymerization.

Comparative Example 4 does not, however, disclose, *inter alia*, the degree of crystallinity of its polymer particles, the absolute value of the difference in the I.T.V. between the center and the surface of the polyester particles, or their acetaldehyde level. Accordingly, Comparative Example 4 does not expressly anticipate the present claims.

Furthermore, Comparative Example 4 does not present a *prima facie* case of inherency. "In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Id.* (citing *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)).

Here, Comparative Example 4 states that "[m]elt-polymerized polymer chips having an intrinsic viscosity of 0.78 dL/g were obtained in the same manner as with Example 1 with the exception that the catalyst solution C was used and the chips were not subjected to solid phase polymerization." Col. 14, lines 32-36. Although the acetaldehyde level of the chips obtained in Comparative Example 4 was not measured, prior to solid state polymerization, the chips obtained from the process as used in Example 1 (but with a different catalyst) had an acetaldehyde level of 180 ppm (see Table 1.)

Claim 26, however, requires that the polyester particles have an acetaldehyde level of 10 ppm or less before introducing the particles into the extrusion zone. Accordingly, Comparative Example 4 does not present a *prima facie* case of inherency.

New claim 122 recites the feature that the polyester particles are spherical. Fujimori et al teach at column 7, lines 40-45 and in the working examples that the

molten polyester polymer is extruded into strand form, followed by cutting. This conventional technique known as strand cutting does not produce spherical particles. Fujimori et al also does not suggest a process of feeding spherical particles to an extrusion zone wherein the absolute value of the difference in the It.V. between the center and the surface of the spherical polyester particles fed to the extrusion zone is less than 0.25 dL/g and the spherical particles have not been solid state polymerized.

### **III. Conclusion**

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration of this application and the timely allowance of the pending claims.

Respectfully submitted,

By: /Dennis V. Carmen/

Reg. No. 35,007

Date: June 18, 2008